

IN THE MISSOURI SUPREME COURT

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|-------------------------------|---|--------------------|
| CITY OF ST. LOUIS, et al. |) | |
| |) | Appeal No. SC94212 |
| Appellants/Cross-Respondents, |) | |
| |) | |
| v. |) | |
| |) | |
| SARAH TUPPER, et al., |) | |
| |) | |
| Respondents/Cross-Appellants. |) | |

APPEAL FROM THE CIRCUIT COURT OF
THE CITY OF ST. LOUIS, STATE OF MISSOURI

HONORABLE STEVEN R. OHMER
DIVISION NO. 13

BRIEF OF AMICUS CURIAE
CITY OF ST. PETERS, MISSOURI

Respectfully submitted,

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Consent of the Parties

The City of St. Peters, Missouri (“St. Peters”), pursuant to Rule 84.05(f)(2), has received consent from all of the parties to file an amicus brief in this matter.

Interest of the Amicus

St. Peters is a municipal corporation of the fourth class located within St. Charles County, Missouri. Like many cities within Missouri, St. Peters is interested in reducing the number of vehicle accidents, and the resulting personal injuries, which are caused by individuals who run red lights. To achieve this public safety goal, St. Peters implemented an automated red-light traffic enforcement system, Ordinance No. 4536, § 335.095 of the St. Peters Code (“St. Peters’ Ordinance”). St. Peters’ Ordinance authorized the use of automated photographs and video to enforce the City Traffic Code. St. Peters’ Ordinance provides that a “person commits an offense... when such person fails to comply with the City Traffic Code and the violation is detected through the automated red light enforcement system.” A driver of a vehicle that violates St. Peters’ Ordinance is subject to a fine up to \$200.00. St. Peters’ Ordinance provided that no points would be assessed against the violator’s driving record for this offense, whereas City of St. Louis Ordinance No. 66868 (“St. Louis’ Ordinance”) is silent on the issue of whether points are assessed against the violator’s driving record. St. Peters’ Ordinance does not rely on any presumption that the owner of the vehicle was the driver of the vehicle, but instead requires St. Peters to prove that the person charged with violation of St. Peters’ Ordinance did indeed violate the Traffic Code.

On June 3, 2014, the Missouri Court of Appeals issued its opinion in *City of St. Peters v. Roeder*, ED100701, which held, among other things, that St. Peters' Ordinance conflicted with Missouri law by failing to assess two points against the violator's driving record and, as a result, was void. This same issue and related issues are among those that will be addressed by this Court in this matter.

St. Peters supports a municipality's ability to pass laws that protect the public from the dangers imposed by individuals that run red lights, including the judicious use of automated red-light traffic enforcement systems to enforce the Traffic Code.

Jurisdictional Statement

This action involves citations issued by the City of St. Louis ("St. Louis") against Petitioners, Sarah Tupper ("Tupper") and Sandra Thurmond ("Thurmond") (collectively, "Petitioners"), for violation of St. Louis' Ordinance.

St. Louis' Ordinance authorized the installation of automated cameras to monitor vehicles that traveled into intersections after the traffic control signal turned red, and provided for the prosecution of individuals who violate St. Louis' Traffic Code, as detected by the automated camera enforcement system.

On February 11, 2014, the Circuit Court entered its Order and Judgment, and held that St. Louis' Ordinance is "invalid."

On June 24, 2014, this Court granted transfer of this cause under Rule 83.01.

Statement of Facts

St. Louis' Ordinance authorized the creation and operation of St. Louis' automated red-light traffic enforcement system. L.F. 223. St. Louis' Ordinance provides that if St. Louis proves: "1) that a motor vehicle was being operated or used; 2) that the operation or use of the motor vehicle was in violation of Traffic Code Ordinance... and 3) that the defendant is the Owner of the motor vehicle in question, then:" "[a] rebuttable presumption exists that such Owner of a motor vehicle operated or used in violation of the Traffic Code Ordinance... was the operator of the vehicle at the time and place the violation was captured by the Automated Traffic Control System Record." L.F. 223, 241-43.

St. Louis' Ordinance does not state whether points are assessed against any person's driving record for a red-light violation captured on St. Louis' automated red-light cameras. L.F. 223. St. Louis' Ordinance does not state whether a red-light camera violation is considered a moving violation. L.F. 224. Instead, St. Louis reports red-light camera violations to the Department of Revenue as directed by § 43.505 RSMo, which, through the Missouri Charge Code Manual (the "Manual"), provides that such violations should be reported under charge code 93427. L.F. 223-23, 233. Charge code 93427 is entitled "Public Safety Violation – red light camera (no points)." L.F. 233. The Department of Revenue does not assess points against a person's driving record for any violation reported under charge code 93427. L.F. 224.

St. Louis charged Petitioners with violating St. Louis' Ordinance, but subsequently dismissed those citations. L.F. 227-30. After being charged with violating

St. Louis' Ordinance, Petitioners filed suit against St. Louis and others, and requested the Circuit Court enjoin St. Louis from continuing to enforce St. Louis' Ordinance. L.F. 14-37. The Circuit Court, after receiving stipulations from the parties and hearing limited evidence, entered the Judgment which is the subject of this appeal (the "Judgment"). L. F. 455-72.

In its Judgment, the Circuit Court stated that St. Louis' Ordinance "was the subject of *Smith v. City of St. Louis*, 409 S.W.3d 404 (Mo. App. E.D. 2013)," and that the Court of Appeals "held in part that [St. Louis' Ordinance] was 'void for failure to comply with the Supreme Court Rules.'" L.F. 467 (quoting *Smith*, 409 S.W.3d at 427). The Circuit Court held that, notwithstanding St. Louis' revision of its Notice of Violation to comply with Supreme Court Rules, St. Louis' Ordinance was and is void. L.F. 467-68.

The Circuit Court further stated that "'red light' cases out of the Eastern and Western District Courts of Appeals have strongly trended towards the invalidation of red light camera ordinances in general." L.F. 468-70. The Circuit Court stated that prior appellate cases "shifted the Court's prior position on the validity of the 'rebuttable presumption,' a prime feature of [St. Louis'] red light camera ordinance." L.F. 469; citing *Brunner v. City of Arnold*, ED 99034, 2013 WL 6627959 (Mo. App. E.D. 2013) (Court of Appeals held that an ordinance's rebuttable presumption violated the due process clause).

The Circuit Court held that St. Louis' Ordinance is "invalid," and granted Petitioners' request for an injunction. L.F. 471.

Point Relied On

I. The Circuit Court erred in finding that St. Louis' Ordinance was invalid because an automated red-light camera ordinance is not in conflict with State law merely because said ordinance fails to require assessment of points against a violator's driving record, in that § 43.505 RSMo provides the Missouri Department of Public Safety with the authority to determine whether the violation of an automated red-light camera ordinance subjects the violator to points and, in this case, the Missouri Department of Public Safety has determined that such a violation should *not* result in the assessment of points.

A. Standard of Review

“Matters of statutory interpretation and the application of [a] statute to specific facts are... reviewed de novo.” *Otte v. Edwards*, 370 S.W.3d 898, 900 (Mo. App. E.D. 2012). In addition, the determination of “[w]hether a city exceeds its statutory authority in passing an ordinance” is reviewed de novo. *City of Kansas City v. Carlson*, 292 S.W.3d 368, 370 (Mo. App. W.D. 2009).

B. §§ 43.505 and 43.512 RSMo require that municipalities “shall” follow the directives of the Missouri Charge Code Manual.

The Missouri legislature, through § 43.505 RSMo, designated the **Department of Public Safety** as the “central repository for the collection, maintenance, analysis and reporting of crime incident activity generated by law enforcement agencies in this state.” § 43.505.1 RSMo (emphasis added). Missouri law provides that the Department of Public Safety “shall develop and operate a uniform crime reporting system....” *Id.*

“The central repository [i.e, the Department of Public Safety], with the approval of the supreme court, shall publish and make available to criminal justice officials, a standard manual of codes for all offenses in Missouri.” § 43.512 RSMo. “The manual of codes shall be known as the ‘Missouri Charge Code Manual’, and ***shall*** be used by ***all*** criminal justice agencies for reporting information required by sections 43.500 to 43.530.” *Id.* (emphasis added). Missouri law provides that any “law enforcement agency” that violates § 43.505 RSMo “may be ineligible to receive state or federal funds which would otherwise be paid to such agency for law enforcement, safety or criminal justice purposes.” § 43.505.4 RSMo.

The Manual is published under the authority of the Missouri Supreme Court. § 43.512 RSMo. The State of Missouri, through § 43.512 RSMo and the statutorily-mandated Manual currently in effect,¹ classify a red-light camera conviction as one that should not be reported for the assessment of points. The Manual provides that a “public safety violation – red light camera (no points)” need not be reported to the Director of Revenue.

The Judgment did not discuss the apparent conflict between § 302.302 RSMo, which was interpreted by the Court of Appeals in *Roeder* to require reporting of any violation of a red-light camera ordinance for the assessment of two points, and §§ 43.505

¹ <http://www.mshp.dps.mo.gov/MSHPWeb/Publications/Handbooks-Manuals/documents/2013-2014%20Charge%20Code%20Manual.pdf> (last visited June 5, 2014; see page 177 of 190).

and 43.512 RSMo, which, through the Manual, direct that such violations need not be reported to the Director of Revenue.

Stated another way, the *Roeder* decision and the Circuit Court decision in *Tupper* require municipalities to report to the Director of Revenue all violations of red-light camera ordinances under a charge code that would cause the assessment of points, even though the Missouri legislature, through the Department of Public Safety, has ordered that municipalities shall **not** report such violations for the assessment of points.

The Missouri Supreme Court has explained that statutes “are in pari materia when they relate to the same matter or subject” and, in such cases, those statutes “are intended to be read consistently and harmoniously in their several parts and provisions.” *State ex rel. Rothermich v. Gallagher*, 816 S.W.2d 194, 200 (Mo. banc 1991). However, “[i]f the legislature enacts two laws on the same subject that are irreconcilable, the latter has the effect of repealing the former.” *Bartley v. Special Sch. Dist. of St. Louis County*, 649 S.W.2d 864, 867 (Mo. banc 1983) (superseded by statute as stated in *Martin v. City of Washington*, 848 S.W.2d 487, 490 (Mo. banc 1993)). “But for repeal of a statute by implication, the statutes must be so inimical to each other that both cannot stand and the legislature, in fact, intended repeal although it did not do so.” *Id.* “And where two acts are seemingly incompatible, they must, if feasible, be so construed that the later act will not operate as a repealer by implication, since if they are not irreconcilably inconsistent, both must stand.” *Id.*

Sections 43.505, 43.512, and 302.302 RSMo are interrelated on the issue of the reporting Traffic Code violations for assessment of points on a driver’s record.

Accordingly, these statutes are considered in “para materia” and should be read “consistently and harmoniously.” *State ex rel. Rothermich*, 816 S.W.2d at 200. In addition, it is highly unlikely that the legislature intended to repeal any of these statutes by implication. As such, the statutes should be “harmonized when reasonable.” *Bartley*, 649 S.W.2d at 867.

This Court should analyze §§ 43.505, 43.512, and 302.302 RSMo and give effect to and harmonize those statutes. In doing so, the Court should hold that violations of an automated red-light camera system are *not* moving violations that subject violators to points against their driving record under § 302.302 RSMo. Instead, such violations are a separate category of violations which are not explicitly referenced in § 302.302 RSMo.

Section 302.302 RSMo does not contain any provisions that address citations issued through an automated traffic enforcement system. Without specific direction from the Missouri legislature regarding what point assessment, if any, should result from a violation of an automated traffic enforcement system, the Department of Public Safety determined that such violations should not result in points against a driver’s record. The Department of Public Safety acts under the authority of § 43.512 RSMo, and with the approval of this Court. The Department of Public Safety Charge Code Manual “**shall be used by all criminal justice agencies...**” § 43.512 RSMo. In addition, municipalities do not actually make the final determination about whether points are assessed against a driver’s record. Municipalities do not assess points against any driver’s record, as that is the function of the Missouri Department of Revenue. Municipalities merely report as

appropriate to the Department of Revenue, using the Department of Public Safety's Charge Codes set out in the Manual.

Chapters 43 and 302 should be construed harmoniously to give effect to both by finding that the Department of Public Safety is tasked by Missouri Statutes with identifying which violations should and should not be reported. The Department of Revenue is charged with receiving such reports to "put into effect a point system for the suspension and revocation of licenses." § 302.302.1 RSMo.² Thus, there was a determination made by the Department of Public Safety that Traffic Code violations detected solely through an automated camera system should not, by themselves, result in the suspension or revocation of a driver's license. Under such harmonious reading of these statutes, St. Louis' Ordinance and St. Peters' Ordinance both can and should be given full effect. Through Chapter 43, the Department of Public Safety identifies the violation that shall or shall not be reported to the Department of Revenue; and through Chapter 302, the Department of Revenue receives, assesses, and keeps track of points assessed on reported violations consistent with the Department of Public Safety's directions through the Manual.

St. Peters respectfully requests that this Court reverse the Judgment of the Circuit Court and hold that automated red-light traffic enforcement systems, such as that implemented by St. Louis, are valid and not in conflict with Missouri law.

² Running a red light is not specifically listed in § 302.302 RSMo.

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) in that the Brief contains 2,490 words, exclusive of the cover, certificate of service, certificate required by Rule 84.06(c), signature block and appendix as determined by Microsoft Office Word software;

2. This Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 13-point Times New Roman.

3. That a true and correct copy of the attached brief was served by the Court's electronic filing system and by regular mail, on this 31st day of July, 2014, to:

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